

IN THE COURT OF JUDICIAL MAGISTRATE-I, KALAYA, ORAKZAI

Case No44/2 of 2022.

Date of institution.....31.08.2022.

Date of decision.....26.07.2023.

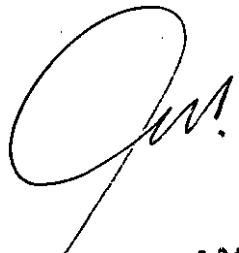
Case FIR No. 50 Dated: 19.05.2022 U/S 504/384/341/34 PPC, PS Kalaya

Order. No. 18

26.07.2023

None present for the state. Accused Jamshid on bail present. Rest of the accused are exempted. Complainant absent. Brother of complainant Mobeen Khan present. Arguments on application u/s 249-A Cr.PC already heard and record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that complainant was fetching bricks in tractor trolley for a tube-well approved by the government. When they reached the spot, accused Umar Hayat, Jamshid Khan, Imran Khan and Khwaja Muhammad intercepted/stopped the tractor from proceedings to the spot tube-well. Accused forcibly took him to their house and parked the tractor in their house. The occurrence was also witnessed by brother of complainant PW Mobeen Khan. Report of the complainant was recorded vide mad No. 07 dated 13.05.2022. Inquiry was conducted and after preparation of final report, legal opinion was sought from the office of DPP, Orakzai and thereafter, the instant case was registered against the accused facing trial.



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After completion of investigation, complete challan was put in court against accused. Provisions of Section 241-A Cr. PC were

complied with. Formal charge was framed. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused. So far, 04 PWs have been examined.

Muqadar Khan ASHO was examined as PW-01. He stated that report of the complainant namely Jamshid Afridi was recorded by Moharrir of PS Vide Mad No.07 dated 13.05.2022, PS Kalaya. After completion of inquiry and legal opinion from the office of DPP, he chalked FIR Ex-PA. copy of FIR along with relevant document were handed to IO for investigation. His statement was recorded by IO u/s 161 Cr.P.C.

Sub Inspector Shal Muhammad was examined as PW-02. He stated that during the days of occurrence, he was posted as SHO PS Kalaya. Report of complainant Jamshid Afridi was recorded vide mad No. 07 dated 13.05.2022. He initiated inquiry to dig out the real facts. During course of inquiry, he inspect the spot and prepared site plan Ex.PB at the instance of complainant. On 13.05.2022, he took into possession tractor bearing registration No. Z9784, engine No. 629729 chassis No. 239191-12G4 in presence of marginal witnesses. Recovery memo is Ex.PW-2/1. He recorded statements of marginal witness and eye witnesses u/s 161 Cr.PC. After completion of inquiry, he prepared final report which is Ex.PW-2/2. Per his inquiry, the occurrence had taken place. He sought legal opinion from the office of DPP, Orakzai vide his application Ex.PW-2/3. FIR was registered accordingly. After completion of investigation, he submitted complete challan against the accused.


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SI Mehdi Hassan deposed as PW-03. He stated that during the days of occurrence, he was posted as IO at PS Kalaya. Accused facing trial had applied for BBA. On 24.05.2022, accused appeared before him along with court order. Arrest of the accused was shown vide card of arrest as Ex.PW-3/1. He recorded statements of accused u/s 161 Cr.PC. On 16.04.2022, BBA of the accused was confirmed. After completion of investigation, case file was handed over to SHO for submission of complete challan against the accused.

Mobeen Khan, eye witness was examined as PW-04. He stated that complainant Jamshid Afridi is his brother. PW Qabil Noor is his co-villager. On the day of occurrence, they were fetching bricks in tractor trolley for a tube-well approved by the government. Accused Umar Hayat, Jamshid Khan and Imran Khan R/O Qadoos Kalay intercepted/stopped the tractor from proceedings to the spot tube-well. Accused Umar Hayat forcibly took the tractor to his house. They informed the nearby police post. Tractor remained parked in the PS for about 18 days and later on, it was released on superdari. His brother/complainant Jamshid Afridi, reported the occurrence to the local police. The spot was pointed out to SHO Shal Muhammad. He charged the accused for the commission of the accused.


PW-01 stated in his cross examination that it is correctly recorded in FIR that there was a civil dispute between the parties and there are civil litigations pending in civil courts between the parties. PW-02 stated in his cross examination that he does not know about the details of the civil cases between the parties. It is correct that FIR was

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registered after 06 days of the occurrence. It is correct that complainant was not recovered from the house or hujra of the accused rather complainant by himself came to PS for report. It is correct that he has not mentioned in the recovery memo the place from where the tractor was recovered. Self-stated that he recovered the tractor from the spot.


PW-03 stated in his cross examination that it is correct that accused facing trial did not confess their guilt before the court. It is also correct that nothing incriminating was recovered from possession of accused or on their pointation. Similarly, PW-04 stated in his cross examination that it is correct that his brother/complainant Jamshid Afridi is charged and at large in a criminal case. He cannot appear before the court. It is also correct that there is civil litigation with the accused party. It is correct that the factum of informing the nearby police post is not mentioned in the report. PW/verifier of the report, Qabil Noor is plaintiff of the civil case pending between them. PW-04, in his examination in chief stated that accused Umar Hayat forcibly took the tractor to his house whereas, per contents of FIR, all the accused facing trial forcibly took the tractor and parked it in their house.

Per record, the alleged occurrence took place on 13.05.2022 at 15:30 hours at Qadoos Kalay and it was reported on 13.05.2022 at 17:00 hours. FIR was registered on 19.05.2022. Per contents of FIR Ex.PA, report of the complainant was incorporated in mad No. 07 dated 13.05.2022 and inquiry was conducted. Final report Ex.PW-2/2 was prepared. Legal opinion was sought from the office of DPP,


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Orakzai vide application Ex.PW-3/2 and thereafter, the instant case was registered against accused facing trial. There is nothing on record which could show that any permission whatsoever, was obtained from the court before initiating the inquiry. Site plan Ex.PB was prepared during the inquiry but it was never verified from the complainant or eye witnesses during course of investigation by the IO.

SI Shal Muhammad (inquiry officer), who deposed as PW-02 stated in his cross examination that there is civil litigation between the complainant and accused party. He also deposed that complainant was not recovered from the house or hujra of the accused. He admitted in his cross examination that he has not mentioned in the recovery memo the place from where the tractor was recovered. Self-stated that tractor was recovered from the spot whereas, complainant, in his report has stated that accused facing trial forcibly took him and the tractor to their house. Neither the complainant nor the tractor was recovered from the possession of the accused facing trial or on their pointation. Similarly, PW-03, in his cross examination stated that nothing incriminating was recovered from possession of accused facing trial or on their pointation. Mobeen Khan (PW-04), who is eye witness to the occurrence, deposed that his brother Jamshid Afridi (complainant) is charged and at large in a criminal case and he cannot appear before the court. He also deposed that soon after the occurrence, they informed the nearby police post and in cross examination, he admitted that this fact has not been mentioned in the report. He also stated that verifier of


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the report/PW Qabil Noor is plaintiff of the civil case pending between them. False implication of accused facing trial cannot be ruled out.

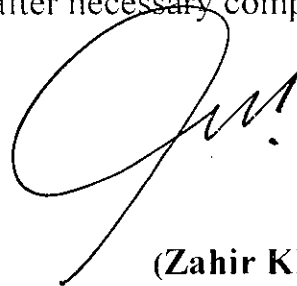
Record further shows that complete challan was put in court against accused facing trial on 31.08.2022. Complainant is charged and at large in another criminal case. His brother, PW-04 admitted this fact and further stated that he (complainant) cannot appear before the court. Agony of trial cannot be prolonged.

There are so many dents and doubts in case of prosecution benefit of which goes to the accused. Nothing incriminating has been recovered from possession of accused or on their pointation. Accused have not confessed their guilt before the court. There is no documentary proof of the motive. Statements of PWs are full of contradictions. Tractor has not been recovered from possession of accused facing trial or on their pointation. There is no probability of accused being convicted. Further proceedings would be a futile exercise and wastage of precious time of the court, therefore, application U/S 249-A Cr. PC is accepted and accused facing trial are acquitted from the charges leveled against them. They are on bail. Their sureties stand discharged from their liability.

Case property be dealt with in accordance with the law.

File be consigned to record room after necessary completion and compilation.

Announced.
26.07.2023



(Zahir Khan)
Judicial Magistrate-I,
Tehsil Kalaya, Orakzai